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Nicholas deB. Katzenbach

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THE DOORS LAW TRAINING OPENS*

I cannot think of any doors law training does not open. Indeed, there is nothing more exciting than to be a budding lawyer today. Those of you who are studying law may be so close to things that you may not really perceive that excitement in the same way that I do. Nor do non-lawyers throughout the world always perceive the excitement of being a lawyer. Although attitudes towards lawyers vary, there are many who think of lawyers as dull and musty characters concerned with drafting documents, making sure all the *i*'s are dotted and the *t*'s are crossed.

Today there is also a certain amount of sentiment that lawyers are mainly crooks, manipulators and political fixers. This general mistrust of lawyers can be summed up under the word "Watergate," for which, indeed, lawyers have a great deal to answer. "Watergate" is not in itself unique, but it is unique at that level of government and it has tarnished the image of lawyers.

So the excitement of being a lawyer really depends very much on how you look at our profession, on your attitude towards law and on your attitude towards yourself. It is terribly easy to lose sight of your purpose, particularly when you are a student, and afterwards, when you get involved in some of the unavoidable routines, the cases, statutes, rules of procedure, administrative rulings and all the other technicalities that go towards the practice of law. But this is not what it is really all about.

I repeat, the doors which a legal training can open are almost infinite, and they touch almost every aspect of our national and international life. Whether you step through those doors depends very much on you, on the quality of your law school training, and on the quality of training which continues afterwards. Much also depends on how you view the world and your role as a lawyer within it.

What is a lawyer? In our society the lawyer is one of the few generalists, perhaps the only one, who remains. Lawyers are not really being trained as specialists. You may have special areas of knowledge that are particularly useful to you, but you are not really a specialist in the sense used by most other professions, although others may see you as one. Some lawyers even see themselves as specialists in "law," narrowly circumscribed as a set of rules and techniques that you learn — such as shepardizing a case, etc. That is important and it must be

* EDITOR'S NOTE: Mr. Katzenbach's remarks, which serve both as an introduction to this issue on legal education and a dedication to Dean Soia Mentschikoff, were made to a group of students and faculty during a meeting of the Visiting Committee of the University of Miami School of Law on October 25, 1974.

The Visiting Committee is composed of judges, well-known practicing attorneys, and business and professional leaders. Special thanks go to Mr. Katzenbach, a member of the Committee, for his permission to publish these remarks.

learned. But being able to look up the latest bit of judicial wisdom or to find the right provisions of the tax code is really a very minor aspect of being a lawyer. It can be terribly important to a client if you do not know how to do it, but that alone really would not open up very many doors.

There are two other functions which are far more important. One of these functions is getting the facts and having the capacity to analyze them, because far more situations that lawyers deal with are decided by the facts than by the law. They are decided by your ability as lawyers to dig out all the facts that may be relevant, and even some that may not appear to be relevant, and relate them to the problems you are trying to resolve or give counsel on. That means never being inhibited by something seemingly outside the field of law. If someone takes a problem to an economist or psychologist, he may very well be told that it is not an economic or a behavioral problem, that it is not within the specialty. But almost all aspects of our life contain legal problems. That means the lawyer must not shy away from life's problems regardless of the need to venture into economics, psychology and other fields involved in understanding the facts with which he is dealing; it is necessary to understand the specialists' theories and apply them as a generalist. The lawyer must gather all the facts, be imaginative about their use, be able to organize and marshal them and to understand them from broader perspectives than he will find in the cases or the statutes in order to determine what the problem is really all about. Understanding that process is terribly important to being a good lawyer.

There is another important function of the lawyer which relates to understanding the values of society. Law is not just a body of rules that are made by courts, administrative agencies, legislatures or executive orders. Law is a body of changing and evolving rules by which an orderly society attains its social, political, economic, moral, and ethical objectives. All the rules and the entire body of learning and precedents have a purpose. That purpose can change as our attitudes change. It can change in the way in which you organize the facts; in the way in which you analyze the problem. You may find that as society changes, the prevailing rules no longer serve their purpose. The facts and the assumptions on which general rules are made keep changing. And so it is really the "why" and to some degree the "how" of law that counts. The lawyer must try to think of a problem first in very broad, general terms and determine what it is all about. He must ask himself why we have this body of law at all. What purpose is it trying to serve? What values is it trying to attain? Why is it important?

You can do that in any law school course, even first year courses which seem so arbitrarily divided into topics. Why do we have the law of contracts? Why do we have the limits on freedom of contract that we have? What functions is it serving in our society? Are they useful

functions? Are they functions that are changing? Are the facts on which it is premised changing? Why do we have a law of torts? Is that a sensible way to allocate risks? What risks?

If you take this approach in your law training, more doors in the field of law will begin to open, and this for two principal reasons. First, because law, and therefore lawyers, are so central to our whole society: to the government, to business, to labor, to all of us. One of my favorite phrases—"law-government"—was often used by the late Karl Llewellyn instead of the term "law" when he referred to this phenomenon. It is a much more descriptive term for what you are studying and what you will be practicing than the word "law" taken by itself. It reflects the fact that our law does not come from the top of the mountain; it comes from our attitudes, objectives, and values. It recognizes that law is simply a part of a process in which our society embodies its fundamental ethical, moral, and political beliefs and aspirations in the changing and evolving rules that law students study. If you see this in your law studies, you will more clearly see your role as a lawyer in society.

The other reason this process approach to law training helps to open doors in the field of law is that you tend to become more sensitive to the society in which you are living. This is important because law-government reflects our sense of what is just and what is right. That requires facts, and it requires a knowledge and understanding of people and the framework in which they operate, because it is the same framework in which laws operate and it reflects how we expect to accomplish results. Furthermore, because we are a political democracy, or at least try to be, we operate as best we can through known rules and not by arbitrary decisions. But neither private nor public institutions set those rules in granite. Thus, in addition to knowing and drafting rules, lawyers must try to understand the institutions with which they are dealing, and try to feel and understand the trends, the drifts, the indecisions and the conflicts in our society. The problems that are still below the surface will be emerging soon and will give you a changing factual context in which the rules law students find in the library will operate. If you do not understand this dynamic process, you cannot analyze the situation. You cannot advise a client sensibly if you do not know where it is going. You must look to the long range in evaluating the facts against evolving public attitudes.

To practice successfully you must know your judges, your administrative agencies, their practices, their procedures, their outlooks and the potential in all of them for change. You must examine the facts as you perceive others might view them. This applies to any field, from a small town to big city practice; from criminal to a corporate practice, from private practice to government legal work. How can you try a case before a jury if you are not sensitive to the public attitudes in that community? You cannot read people's minds in the

law library. How can you advise somebody about taxes today if you are not sensitive to the fact that there is a great deal of pressure for tax reform which may take any number and variety of forms in the future. How can you advise people about licensing arrangements if you are not aware of the controversy, the difficulties and the problems that people are raising with respect to those procedures?

Once you have walked through some of the doors, you will discover that the practice of law is much more difficult in these times than it is in relatively stable times. Our political system is not working very well. There is a tendency to throw matters from indecisive legislatures into the courts. The judicial system is not working very well either. It is overloaded. Too many cases are processed too slowly. The courts are being called upon to answer questions that ought to be resolved in more democratic forums, namely in the legislatures. The new technological age gives birth to enormous new problems before we have even begun to resolve the old ones. Think of all the new values that you have in society today, the new efforts for more freedom. Think of the effort that this country is making to get rid of past discrimination and to create more equality of opportunity. Think of the problem of fairness—simple justice—in our society and the public attitudes towards it. Think for a moment about welfare. Is it possible to create a welfare system to operate in a fair and just way? I am not sure that you can apply a host of eligibility rules and standards and have them administered in a way that is just and fair by hundreds of people who are under-trained, and under-skilled. Think of the problem of distributing the well-being in this country and, more importantly, internationally. Can a world as unequal as ours refuse to face up to the problems of the inequalities?

In all of these problems lawyers are going to play important roles. Sometimes making the problems worse and sometimes solving them. But you will be involved in all of them—as public officials or private attorneys, whatever your “specialty” may be, and whomever you are advising.

In summary, then, the doors which open and the degree of success you have in walking through them, is going to depend not only on your technical skills as lawyers but also on your ability to understand, to analyze, to predict and to influence the values in our society. It is the latter skill which separates the truly excellent from the ordinary lawyer. Those who are willing to develop and apply this skill will reap the full advantage of an exciting legal career.

NICHOLAS DEB. KATZENBACH